IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

MFA.No. 751 of 2002()

OPMV.483/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
.....

APPELLANT: PETITIONERS
---

1. K.J.SEBASTIAN, S/O.LATE JOSEPH,
AGED 58 YEARS, KANNUTHOTIYIL, CHERUKATTOOR POST,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

2. MARY SEBASTIAN, W/O.K.J.SEBASTIAN,
AGED 54 YEARS, KANUTHOTTIYIL, CHERUKATTOOR POST,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

3. BABU SEBASTIAN, S/O.K.J.SEBASTIAN,
AGED 36 YEARS, KANNUTHOTIYIL, CHERUKATTOOR POST,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

4. SAJIMON K.S., S/O.K.J.SEBASTIAN,
AGED 34 YEARS, KANNUTHOTTIYIL, CHERUKATTOOR POST,
MANATHAVADY TALUK, WAYANAD DISTRICT.

5. REJIMON K.S., S/O.K.J.SEBASTIAN,
AGED 31 YEARS, KANNUTHOTIYIL, CHERUKATTOOR POST,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

6. SHIJU SEBASTIAN, S/O.K.J.SEBASTIAN,
AGED 26 YEARS, KANNUTHOTTIYIL, CHERUKATTOOR POST,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

7. METTIN K.S., D/O.K.J.SEBASTIAN,
AGED 22 YEARS, KANNUTHOTTIYIL, CHERUKATTOOR POST,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS: RESPONDENTS
---

1. P.VARADARAJA PERUMAL, S/O.PONNUSWAMI,
   AGED 31 YEARS, S.GOPALAPURAM, TRIMANGALAM,
   MADURAI, TAMILNADU.
   (DRIVER OF LORRY NO.TAZ 2266 D.L.NO. NOT KNOWN)

2. S.N.VARADARAJAN, S/O.NAGAIYASAMY NAIDU,
   AGE NOT KNOWN, GANDHIPURAM, KARUR, TAMILNADU.
   (OWNER OF LORRY TAZ-2266.

3.THE NATIONAL INDIA ASSURANCE CO. LTD.,
   KALPETTA, WAYANAD DISTRICT
   (LOCAL BRANCH OF THE NATIONAL INSURANCE CO. LTD., KARUR)
   POLICY NO.501104/31/94/21/752.

BY ADV. SRI.RAJAN P.KALIYATH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 7.11.2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.751 OF 20O2

Dated this the 7th day of November, 2007

JUDGMENT

Koshy, J.

Appellants are the claimants in OP(MV).No.483 of 1995, on the file of the Motor Accidents Claims Tribunal, Kalpetta and are the father, mother, brothers and sister of deceased Bijumon. Respondents are the respondents in the said OP(MV). On 24.4.1995 at about 7.30 PM the deceased Bijumon.K.S. Was riding the motor cycle bearing registration number KA-38/E-3875 from Bangalore to Madras side through the Highway. He was riding the motor cycle in a low speed keeping his correct side. While so, at Madewala, the lorry bearing registration number TAZ 2266 driven by the 1st respondent in a rash and negligent manner and in over speed came from Madras to Bangalore side and hit on the motor cycle and on the deceased and the deceased sustained grievous injuries. Immediately he was taken to St.John's Medical College Hospital, Bangalore and was admitted there and was treated as an inpatient from 24.4.95 to 28.4.95. On 28.4.95 the deceased succumbed to the injuries. Alleging that accident occurred due to the negligence of the driver of

the lorry driven by the first respondent and insured by the third respondent Insurance Company, the appellants-petitioners filed application for compensation claiming Rs.4,00,000/-. Tribunal found that the accident occurred due to the negligence of the driver of the offending vehicle insured with the third respondent Insurance Company. But the Tribunal has awarded only a total compensation of Rs.90,800/-. Only the quantum of compensation is disputed in this appeal.

2. The deceased was aged 22 at the time of death. He was studying for Bachelor of Hotel Management (B.H.M) at Christ college, Bangalore. According to the petitioners, he was a brilliant student and on completing the course, he would get a job and get Rs.10,000/- per month as salary and there is prospects in employment also. It is argued that such students will get job in abroad also. The Tribunal has taken only Rs.1,200/- as monthly income and it was calculated on different levels. We are the opinion that vagaries of life cannot be predicted. But he was a degree student for catering and we cannot ignore his educational qualification etc. at the time of accident for calculating compensation. Of course, parents lost all the hopes and their loss

cannot be estimated in money. Considering the fact that a 22 year old boy suffered a fatal injury on 24.4.1995 coming from Bangalore, we are of the opinion that atleast Rs.2,100/- can be fixed as monthly income and family contribution can be fixed as Rs.1,400/- after deducting 1/3 for personal expenses. It is contended by the petitioners that the deceased was only 22 year old boy. The Supreme Court has held that if the accident is occurred between the age of 20 and 25, maximum multiplier should be given and it is also further argued that because of the reduction of interest rate and increase of the life expectancy, a higher multiplier should be fixed. He was unmarried. We have to look into the age of the claimants also. The mother of the deceased was aged 47 whereas the father was 51. There are two younger sisters aged 19 and 15 years. Therefore, we take 13 as the multiplier. It is true that after marriage, some percentage of income would not be given to the family but there are chances of increase in the income also. But we are taking only the age of the parents for fixing multiplier. We fix family contribution as Rs.2,18,400/- (1400 x 12 x 13). The Tribunal awarded only Rs.67,200/- as loss of dependency. Therefore, additional compensation payable will be Rs.1,51,200/-. Even though it is

argued that compensation granted on other heads requires enhancement, we are not changing the same. The additional amount of Rs.1,51,200/- should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application to the date of deposit, over and above the decreed amount passed by the Tribunal after deducting the amount already deposited. On deposit of the amount, it can be withdrawn by appellants 1 and 2, father and mother of the deceased, on deposit of the same by the third respondent Insurance Company.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO. 751 OF 2002

JUDGMENT

7.11.2007